No. 15,105

United States Court of Appeals

For the Ninth Circuit

PALO ALTO MUTUAL SAVINGS AND LOAN ASSOCIATION,

Appellant,

vs.

RALPH E. WILLIAMS, Trustee of the Estate of John E. Duskin, Jr., formerly doing business as John E. Duskin, Jr., General Contractor, Bankrupt,

Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

Among the assets of the bankrupt estate were two parcels of real property, each of which was subject to the first deed of trust held by the appellant, one or more subordinate deeds of trust and various mechanic lien and judgment lien claimants. Pursuant to proceedings duly had before the referee in bankruptcy, the trustee on the request of the junior lien claimants

was authorized to sell all of the real property, including the two parcels subject to appellant's deed of trust, which parcels were sold for sums sufficient to pay the principal and interest to the date of the payment on appellant's deeds of trust, but for a sum insufficient to pay the second deeds of trust in full or anything on the mechanic lien claims.

QUESTION.

Where real property is sold in bankruptcy proceedings free and clear of liens, and the sale proceeds are sufficient to pay the principal of the first deed of trust, for which the property is first security, together with accrued interest thereon to date of payment, but are insufficient to pay the second deed of trust or the mechanic lien claims, can post-bankruptcy interest be allowed on the first deed of trust?

ARGUMENT.

The Court below in rendering its decisions disallowing post-bankruptcy interest, properly followed the rules set forth in *Beecher v. Leavenworth State Bank,* 192 F. 2d 10 (9th Cir., 1951). The rules established by the *Beecher* case are clear and concise (as set forth on page 14 of the reported decision) and are cited by appellant in its brief at page 13.

We first answer the contention of appellant (Appellant's brief, page 12) that the rule of the *Beecher*

case does not apply to this situation in that the *Beecher* case arose under Section 75 of the Bankruptcy Act (Farm-debtor proceedings), by pointing out that the Supreme Court has consistently held that the interpretation of the Bankruptcy Act applies equally to straight bankruptcies, *City of New York v. Saper,* 336 U.S. 328, 93 L.Ed. 710; *Sexton v. Dreyfus,* 219 U.S. 339, 55 L.Ed. 244; Chapter X proceedings, *United States v. Edens,* 342 U.S. 912, 96 L.Ed. 682 (affirming 189 F. 876); and Chapter XI proceedings, *United States v. General Engineering & Mfg. Co., Inc.,* 342 U.S. 912, 96 L.Ed. 682 (affirming 188 F. 2d 80).

A. SUPREME COURT CASES ON, AND HISTORY OF, THE QUESTION.

The first decision of the U. S. Supreme Court to consider is *Coder v. Arts,* 213 U.S. 223, 53 L.Ed. 772. The decision is lengthy. It deals with the law of fraudulent conveyances. The only statement on the question here presented to be found in either the opinion of the Court or in the arguments of counsel, as summarized in the Lawyers Edition report, is the second to the last sentence in the Court's opinion:

> "Nor do we think the circuit court of appeals erred in holding that, inasmuch as the estate was ample for that purpose, Arts was entitled to interest on his mortgage debt."

There is no discussion whatsoever of the reason for this statement nor does it appear that the question

was squarely presented to the Supreme Court. The situation is very similar to that appearing in several Supreme Court cases referred to in *City of New York v. Saper,* 336 U.S. 328, 93 L.Ed. 710 infra, in which reference was made to interest on tax claims to date of payment, although the question of the allowability thereof was not presented to the Supreme Court in those cases.

According to the Supreme Court itself *Coder v. Arts* is authority for the following proposition:

> "But where an estate was ample to pay *all* creditors and to pay interest even after the petition was filed, equitable considerations were invoked to permit payment of this additional interest to the secured creditor *rather than to the debtor.*" (Emphasis added.)[1]
>
> *Vanston Bondholders Protective Committee v. Green,* 329 U.S. 156, 164, 91 L.Ed. 162, 167.

It will be noted therefore that *Coder v. Arts* according to the Supreme Court in the *Vanston* case, is authority for one of the two recognized exceptions referred to in the footnote from the *Saper* case hereinafter quoted. It will be pointed out below that these same exceptions were recognized by the Honorable Court in the *Beecher* case.

The next case to consider is *Sexton v. Dreyfus,* 219 U.S. 339, 55 L.Ed. 244. This case factually involved a slightly different situation in that the property which was security did not sell for a sum sufficient

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[1]When there are sufficient funds to pay all creditors in full, unsecured creditors are also paid interest to the date of payment.

to pay the principal in full, and the decision is therefore authority to the effect that a claim for post-bankruptcy interest will not share with the claims of unsecured creditors in the distribution of the assets of the estate. The reasoning of the Court and the language thereof is not limited to this situation as will be seen from the review of the history of the Bankruptcy Act by Justice Holmes at page 344, as follows:

> "For more than a century and a half the theory of the English bankrupt system has been that everything stops at a certain date. Interest was not computed beyond the date of the commission . . . the rule was laid down not because of the words of the statute, but as a fundamental principle. We take our bankruptcy system from England, and we naturally assume that the fundamental principles upon which it was administered were adopted by us when we copied the system, somewhat as the established construction of a law goes with the words where they are copied by another state." (Cases omitted.)[2]

The true significance of the *Sexton* decision becomes apparent when an examination is made of the decisions of the Circuit Court and of the district judge.

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[2]That the Supreme Court has followed the rule that everything stops at a certain date is well pointed out in *White v. Stump,* 266 U. S. 310, 69 L. Ed. 301, which case involved homestead laws and wherein the court disallowed a homestead filed after bankruptcy holding that the law discloses a purpose "to fix the line of cleavage" with special regard to the conditions existing when the petition is filed, overruling this Court in 284 F. 199 which held that the homestead could be declared after bankruptcy. See also *Sampsell v. Straub,* 194 F. 2d 228.

Judge Hand, then a district judge, wrote the decision of the District Court under the name of *In re Kessler & Co.*, 171 F. 751. He reviewed many of the *English* cases, decided not to follow them, cited *Coder v. Arts* (supra), and held that the creditor could apply the proceeds of the sale first to the interest which accrued after bankruptcy.

The Circuit Court, in *In re Kessler*, 180 F. 979, by a divided opinion affirmed Judge Hand. The short dissenting opinion refers to the advantages of conforming to the practice in England.

The Supreme Court, in the *Sexton* case, therefore fully considered the diverging points of view and in reversing the Circuit Court adopted the rule that interest on all secured claims ceases at the date of bankruptcy.

In *Ex parte Lubbock*, 9 Jur. N.S. 854 (1863), cited by Justice Holmes, the Lord Chancellor, in exactly the situation presented in the instant case, held that the holder of the mortgage was entitled to interest only to the date of the filing of the petition, even though there was a surplus sufficient to pay the interest to the date of payment. In reaching his decision the Lord Chancellor stated:

> "Nothing can be better settled by the practice of the court for the last sixty years, than that where securities consist of an equitable mortgage, and the mortgagee after bankruptcy presents a petition to have that security realized, he is not entitled to any interest subsequent to the date of the fiat."

For additional history of the interpretation of the English Bankruptcy Act, we refer the Court to 2 *Blackstone's Commentaries* 488, wherein it was pointed out that the usual rule is that all interest ceases at the time of the issuing of the commission, and to the following cases cited by Mr. Justice Holmes, *Ex parte Bennet*, 2 Atk. 527; *Ex parte Wardell,* 1787; *Ex parte Hercy,* 1702; 1 *Cooke, Bankrupt Laws,* 4th Ed. 181; *Ex parte Badger,* 4 Ves. Jr. 165; *Ex parte Ramsbottom,* 2 Mont. & A 79; *Ex parte Penfold,* 4 De G. & S. 282; *Re Savin,* L.R. 7 Ch. 760, 764; *Ex parte Bath,* L.R. 22 Ch. Div. 450, 454; *Quartermaine's Case* (1892), L. Ch. 639; *and Re Bonacino,* 1 Manson, 59.

In 2 *Halsbury Laws of England,* at page 302, it is stated:

> "If a secured creditor realises his security, he may prove for the balance of principal and interest, if any, due at the date of the receiving order after deducting the net amount realised. The net proceeds of such realisation must not be applied to interest accrued after such date, but profits made from an unrealised security after such date may be so applied."[r]

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[r]Ibid., Sched. II, r. 10. See *Re Barker, Ex parte Penfold* (1851), 4 De G. & Sm. 282; 4 Digest 379, 3492; *Re Savin* (1872) 7 Ch. App. 760; 4 Digest 379, 3498; *Re London, Windsor and Greenwich Hotels Co., Quartermaine's Case* (1892), 1 Ch. 639; 10 Digest 950, 6506; *Re Bonacino, Ex parte Discount Banking Co.* (1894), L. Mans. 59; 4 Digest 379, 3497.

The next Supreme Court case to be considered is *City of New York v. Saper,* 336 U.S. 328, 93 L.Ed.

710, which involved the question as to whether interest runs on tax claims to date of payment rather than the date of bankruptcy.

Prior to this decision from the time of the enactment of the Bankruptcy Act, district and circuit Courts throughout the country had held that interest ran to the date of payment. The great number of cases cited to the Court to this effect did not sway it:

> "Petitioners contend that judicial decisions during those periods have now been incorporated into a legislative policy allowing interest on tax claims to payment, thereby producing a rule of law beyond further judicial scrutiny." (336 U.S. 333.)

Rather was the Court swayed by the argument of counsel for respondent, who contends that interest ceased at the date of bankruptcy:

> "Precedent and reason indicate that this court should abrogate this rule of judicial origin in order to prevent the perpetuation of further inequities, inconsistencies and anomalies resulting from its application." (336 U.S. 329.)

In reversing all previous precedent to the effect that interest on tax claims continues to the date of payment, Mr. Justice Jackson, speaking for the Court, referred, at page 330, to the rule dealing with interest on secured claims:

> "More than forty years ago Mr. Justice Holmes wrote for this Court that the rule stopping interest at bankruptcy had then been followed for more than a century and a half. He said the rule was not a matter of legislative command or statu-

tory construction but rather, a fundamental principle of the English bankruptcy[7] system which we copied. Sexton v. Dreyfus, 217 U. S. 339, 344; 55 L. Ed. 244, 245; 31 S. Ct. 256; 25 Am. Bankr. 363. Our present statute contains no provision expressly repudiating that principle or allowing an exception in favor of tax claims. Every logical implication from relevant provisions is to the contrary."

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[7]"In England the practice was well established, 2 Blackstone Commentaries 488. . .; and *applied to mortgages as well as unsecured debts . . . Two exceptions are recognized:* if the alleged 'bankrupt' proved solvent, creditors received post-bankruptcy interest before any surplus reverted to the debtor . . .; and if securities held by a creditor as collateral produced interest or dividends during bankruptcy, such amounts were applied to post-bankruptcy interest . . . These exceptions have been carried over into our system. See American Iron & Steel Mfg. Co. v. Seaboard Air Line R. Co., 233 U. S. 261, 267; 58 L.Ed. 949, 954; 34 S. Ct. 502; Sexton v. Dreyfus, 219 U. S. 339, 346; 55 L. Ed. 244, 246; 31 S. Ct. 256; 25 Am. Bankr. 363."

The *Saper* case, decided in 1948, is of course significant in that it shows a modern tendency to limit interest to the date of bankruptcy in spite of the apparently well settled rule to the contrary in the case of taxes.

It is interesting to note that just as before the *Saper* case the Supreme Court had not ruled upon the question of post-bankruptcy interest on tax claims, neither has the Supreme Court ruled on the allowability of post-bankruptcy interest on secured claims in a situation such as exists in the instant case.

The next Supreme Court case dealing with the question is *Vanston Bondholders Protective Committee v. Green,* 329 U.S. 156, 91 L.Ed. 162, previously

referred to. This case involved an indenture agreement which provided for the payment of interest on unpaid interest. While the debtor was insolvent its assets were sufficient to pay the first mortgage bondholders in full, including the interest on interest. The Court pointed out that should interest on interest be paid, subordinate creditors would receive a greatly reduced share in the reorganized corporation. The Court refused to allow interest on interest, as not being "in accord with the equitable principles governing bankruptcy proceedings."

As to the allowance of interest the Court stated, at page 165:

> "It is manifest that the touchstone of each decision on allowance of interest in bankruptcy, receivership and reorganization has been a balance of equities between creditor and creditor or between creditors and the debtor."

This case will be further discussed below.

B. DECISIONS OF THIS CIRCUIT.

In 1946, in *U. S. v. Sampsell,* 153 F. 2d 731, 736, this Court stated:

> "The general rule holds that interest stops running upon secured and unsecured claims after a debtor passes into bankruptcy unless the estate is solvent . . . *Sexton v. Dreyfus* . . . There is an exception, however, holding that the rule does not apply to debts or claims of secured debts after and during bankruptcy when the mortgaged prop-

> erty is sufficient to pay the principal and interest of the mortgaged debt. . . . The accrual of interest is a part of the debt to the mortgagee and should not be affected by bankruptcy. . . . To prevent the running of interest upon a secured debt, when the security is sufficient to pay the debt and the interest, would in effect permit the bankruptcy proceedings to adversely affect the lien which is contrary to the provision in the Bankruptcy Act that a lien shall not be affected by the Act. . . ."

This excerpt from that decision clearly shows that the Court had before it all of the arguments in favor of the rule contended for by counsel for appellant and adopted that rule. *The Sampsell case, however, was expressly over-ruled in Beecher v. Leavenworth State Bank*, 192 F. 2d 10, in which case, in footnote 4, Chief Judge Denman stated:

> "Our decision in *United States v. Sampsell,* 9 Cir., 153 F. 2d 731, allowing post-bankruptcy interest on a secured claim when the sale proceeds of the security were ample for that purpose was necessarily overruled by the Supreme Court in the Vanston case which followed the Sampsell case."

The *Beecher* case arose in Washington and involved the allowability of various claims presented against the estate. Included in the claims presented for allowance was the secured claim of Katherine C. Parker and the secured claim of Chelan County. There is nothing in the decision to indicate whether the security was worth more or less than the amount of these claims. We likewise cannot ascertain from the opinion

whether the claims of Federal Land Bank of Spokane and of Leavenworth State Bank were secured at the time of the filing of the petition.

The opinion sets forth the general rule, the basis for the general rule, and the exceptions to the general rule.

The Court states that "as a general rule interest stops on both secured and unsecured claims upon the date of the filing of petition in bankruptcy." (Citing *Sexton v. Dreyfus, supra.*)

The Court advances the following reasons for the rule:

(a) It is a rule of convenience which has developed from a century and a half of English bankruptcy practice.

(b) The basis of the rule is to allow orderly administration of the bankrupt's assets.

(c) Matters must be brought to a halt at a time certain and the date of the filing of the petition allows the rendition of accounts without doubt as to any future claims for interest.

(d) Certain peculiar considerations require the application of the rule to interest on secured claims.

(i) Otherwise the equity of unsecured creditors is in danger of being wiped out by interest claims of secured creditors who have extended credit at high rates during the debtor's transition period of financial embarrassment prior to bankruptcy.

(ii) The period of administration may be lengthy.

(iii) A contrary rule would discourage contests of secured claims by the unsecured creditors who would be forced to abstain so that the administration of the estate could be wound up quickly and the trustee would have to make quick and possibly unadvantageous sales, so as to prevent the running of interest.

It will be noted that each of these arguments advanced by Chief Judge Denman applies equally to the situation where the property sells for a sum in excess of the principal and interest due on the secured obligation, and to the situation where the property sells for a sum less than sufficient to pay the secured claim.

The Court sets up recognized qualifications of the rule that interest on secured claims stops at the date of bankruptcy:

(a) Where the estate turns out to be fully solvent it has been thought to be more equitable to apply the surplus to creditors' claim for interest, rather than returning the money to the debtor.

(b) If the securities in the creditors' possession pledged as collateral yield income, this amount has been charged with the secured creditors' claim for interest, also on the basis of doing equity.

The Court points out that under *Vanston v. Green* (supra) interest shall be allowed after bankruptcy on secured claims only when equitable reasons exist for doing so. The *Vanston* case has previously been cited with approval in this circuit in *Pacific States Corporation v. Hall,* 166 F. 2d 668.

District judges in addition to District Judge Carter in the order herein complained of likewise have interpreted the *Beecher* case to deny post-bankruptcy interest except when within the enumerated exceptions. We call the Court's attention to the order of District Judge Murphy in the matter of *California Constructors, Inc., Bankrupt.* No. 38991, United States District Court for the Northern District of California, which order is set forth in Appendix A. We also call the Court's attention to the decision of District Judge Hall of the Southern District of California in the matter of *In re Pollard Bros., Ltd., a corporation, Debtor*, 128 F. Supp. 818, a case involving the allowance of interest after the filing of the petition in bankruptcy on a lien claim for taxes wherein Judge Hall reversed his previous decisions on the strength of the *Beecher* case and disallowed post-bankruptcy interest.

C. THE ORDER COMPLAINED OF.

With the decision of this Court in the *Beecher* case in mind it becomes pertinent to examine the order of the District Court herein complained of (T.R. p. 54):

> "As to the equities, the petitioner fails to come within any of the exceptions to the ban against the payment of post-bankruptcy interest set forth in Beecher. Here the estate is not solvent; nor is it shown that the security has yielded any income which could be used to pay post-bankruptcy interest on the secured claim. The petitioner here basically is in no different position than the Bank

in Beecher, and although the opinion in Beecher does not clearly indicate whether the proceeds from the sale of the security were sufficient to pay interest on the secured creditor's claim, the grounds for the decision in that case are applicable here where there are sufficient funds to pay interest on the secured creditor's claim for the period of time following bankruptcy to the sale of the security. The fact that the interest money thus preserved for the bankrupt's estate would go to a junior secured creditor, rather than other creditors does not alter the equities. Petitioner has proved no equity which would take this case out of the Beecher rule."

The District Court's findings bring the facts of this case clearly within the rule expressed by this Court in the *Beecher* case.

D. DISCUSSION OF CASES CITED BY APPELLANT.

Appellant in its brief (pp. 6 and 7) cites a group of cases in support of its position that interest accruing after bankruptcy to the date of payment of principal is allowed where the sale of the property realizes enough to satisfy principal plus interest of the secured claim in question. The case cited by appellant in support of this decision decided by the Court of Appeals for the Ninth Circuit is *United States v. Sampsell* (supra), which case was specifically overruled in the *Beecher* case as hereinabove stated.

The case of *Oppenheimer v. Oldham* (5th Cir.), 178 F. 2d 386, cites *United States v. Sampsell,* as one of

the cases in support of its findings, as did *Kagen v. Industrial Washing Machine Co.,* (1st Cir.), 182 F. 2d 139. In the *Oppenheimer* case, the Court states that the practice of allowing interest on amply secured claims after the date of bankruptcy is consistent in principle with the Supreme Court cases of *Sexton v. Dreyfus,* and *Coder v. Arts.* The Court ignores, however, the "fundamental principle" enunciated in *Sexton v. Dreyfus,* and reaffirmed in *City of New York v. Saper,* which was carried over from the English system into our system, that interest on both secured and unsecured claims stops at the date of bankruptcy as a general rule. It seems more proper to say that the Bankruptcy Act manifests no intent to deviate from this latter principle. In any event, the decision of a Court in any circuit other than the Ninth Circuit is not binding in this circuit.

In re Gotham Can Co., 48 F. 2d 540 supports appellee's position where the Court held that interest and other charges accruing subsequent to the filing of the petition *must be expunged.*

In re Torchia, 188 F. 207, 26 Am.B.R., 579 is solely authority for the point that where rents are collected after bankruptcy, the lien claimant is entitled to his interest.

Littleton v. Kincaid, 179 F. 2d 848 was a case in which property in question was sold for an amount sufficient to pay *all* claims against the bankrupt, the expenses of the proceeding and a surplus was left from which the Court directed that post-bankruptcy interest be paid. The Court stated, at page 852:

"Ordinarily interest on claims against a bankrupt estate runs to the filing of the petition in bankruptcy, which in this case was filed on December 19, 1941. Section 63, Sub. a (1, 5), 11 U.S.C.A. Section 103, sub. a (1, 5), of the Bankruptcy Act; City of New York v. Saper, 336 U. S. 328, 69 S. Ct. 554; Collier on Bankruptcy, 14th Ed., Vol. 3, p. 1835 et seq. As was pointed out by Mr. Justice Holmes in Sexton v. Dreyfus, 219 U. S. 339, 344, 31 S. Ct. 256, 55 L. Ed. 244, this rule is not a matter of legislative command or statutory construction but, rather a fundamental principle of the English bankruptcy system which we adopted."

And at page 853:

"... But the reason for the stoppage of interest on funds in custodia legis is not because the claims lose their interest bearing quality, but because of the inequality which would otherwise result in the forced distribution in receivership to debts carrying different rates of interest. This inequality, however, disappears when there is a surplus and then interest is allowed even while the funds are in custodia legis. ..."

In *United States Trust Co. of New York v. Zelle,* 191 F. 2d 822, there were first mortgage bonds bearing 4% interest prior to maturity with no provision for the payment of interest after maturity. During the pendency of the proceedings the bonds matured and the appeal was taken from an order allowing only 4% interest on the bonds. The Court held at page 824

that *Vanston v. Green*, supra. not only condemned the allowance of interest on interest, but that:

> "It definitely establishes the rule of law that any state statute which is not consistent with principles of equity in the management and distribution of a bankrupt estate under the Bankruptcy Act may be disregarded by the Bankruptcy Court."

The Court went on to state:

> ". . . that the right to allowance of interest during bankruptcy does not necessarily spring from an authorization therefor by state law, but arises from equitable considerations resulting from the preferential position of secured creditors to general creditors."

And quoting from the *Vanston* case, that:

> ". . . Bankruptcy courts must administer and enforce the Bankruptcy Act as interpreted by this Court in accordance with authority granted by Congress to determine how and what claims shall be allowed under equitable principles."

In *In re Macomb Trailer Coach, Inc.*, 200 F. 2d 611 (6th Cir.) (cited by appellant at pp. 7 and 10) the Court cited the cases above referred to. The 6th Circuit Court of Appeals merely followed a rule which is *not* followed in this circuit, and clearly recognized that the rule in our 9th Circuit was different.

B. EQUITABLE PRINCIPLES.

In its brief (p. 21) appellant discusses equitable reasons and contends that it is inequitable to deprive

a creditor of post-bankruptcy interest on a sale free of liens. Appellant overlooks the fact that, if the sale had been made subject to the liens, appellant would have had to stand the costs of the collection of the balance due under the deed of trust from the purchaser by reason of the time payments and the possibility that the purchaser would not have made the payments with the costs therein involved, or if the trustee had not sold the property and appellant had proceeded with foreclosure, appellant would have had the additional costs of the foreclosure. In either case, appellant might have suffered losses and rather than being paid its principal, together with interest to the date of the bankruptcy, it might not have been paid at all. Here, appellant was paid in full without any expense to it. This is not "inequity" or abrogation of lien rights. The *Beecher* case, hereinabove discussed, does not involve the destruction of a valid lien. The law as stated by this Court in the *Beecher* case has written by operation of law into a security instrument a provision that the security is only security for interest up to the date of bankruptcy.

It is in the nature of a bankruptcy proceedings to affect creditors' right and this includes the rights of secured creditors as well as unsecured creditors.

> *Wright v. Mountain Trust Bank,* 300 U.S. 440, 470, 81 L.Ed 736, 747.

Referee Archie Katcher of Detroit, Michigan, in an article in 25 Journal of the National Association of Referees in Bankruptcy (April 1951) 40, entitled "A Re-examination of the Allowability of Interest on

Secured Claims", which article was written before the decision in the *Beecher* case, stated:

> "Many considerations favor stopping interest at the date of bankruptcy. It is now fundamental that where the property is subject to the jurisdiction of the Bankruptcy Court, the Court may, under proper circumstances, order the property sold free and clear of the claims of creditors holding security by way of mortgages or otherwise, and transfer the lien to the proceeds of the sale. And when such a sale is had and confirmed, it is idle to say that the secured creditor can rest upon his security. The only way for him to get his money is to file a secured claim, or petition, in the bankruptcy proceedings. Such a claim may be proved and allowed only in accordance with Section 63 of the Bankruptcy Act, which provides in sub-section a:
>
> > 'Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability, as evidenced by a judgment, or an instrument in writing, absolutely owing at the time of the filing of a petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date, or with a rebate of interest upon such as were not then payable and did not bear interest;'
>
> Certainly a mortgage and note are 'instruments in writing', and certainly 'at that date' (date of bankruptcy) the creditor could have recovered only interest to the date of bankruptcy. Moreover, when the Bankruptcy Court allows the secured claim, it in effect renders a judgment in favor of the secured claimant, as to which Section

> 63(a)(1) would have further application, cutting off interest at the date of bankruptcy. Or the finding of the Bankruptcy Court of the amount due the secured claimant might be considered to be a judgment rendered after bankruptcy, in which case Section 63(a)(5) which allows 'provable debts reduced to judgment after the filing of the petition . . ., less costs incurred and interest accrued after the filing of the petition and up to the entry of such judgment' would apply to halt interest at the date of bankruptcy. . . .
>
> From every standpoint, better justice is accomplished by cutting off interest on secured claims at the date of bankruptcy, and requiring the showing of substantial equities before allowing any interest beyond that date."

In the case at bar the sales price of the property is sufficient to pay the principal plus interest to date of payment on the first deed of trust, but insufficient to pay the principal of the second deed of trust in full or to pay anything on the mechanic lien claims. Although the cases heretofore cited on this subject involve general unsecured creditors, appellee finds no distinction between the denial of the right of unsecured creditors to participate in the funds by the allowance of post-bankruptcy interest and this situation where the junior lien holders are the aggrieved parties.

CONCLUSION.

An examination and interpretation of all of the cases hereinabove discussed indicates that there is considerable confusion and difference of opinion. Such

an examination of all of the authorities clearly indicates, particularly with reference to the discussion of the history of our bankruptcy law as adopted from the English law, that the correct interpretation of the law is that made by this Court in the *Beecher* case and followed by the Court below.

It is respectfully submitted that under the decisions of the Supreme Court of the United States and of this Court, this Court should affirm the order of the District Court to the effect that Palo Alto Mutual Savings and Loan Association having been paid the principal of the indebtedness due it together with interest to the date of bankruptcy without any costs of collection, has been paid in full and is not entitled to interest for any period subsequent to the filing of the petition in bankruptcy. The order of the District Court of February 13, 1956, therefore, should be by this Court affirmed.

Dated, San Francisco, California,
October 30, 1956.

Respectfully submitted,

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Of Counsel.

(Appendix "A" Follows.)

Appendix "A"

Appendix "A"

Original. Filed June 11, 1953.
C. W. Calbreath, Clerk.

In the United States District Court
Northern District of California
Southern Division

In the Matter of California Constructors, Inc., Bankrupt.	No. 38,991 In Bankruptcy

ORDER

The Prudential Insurance Company, a secured creditor of the bankrupt, has petitioned this Court to review the referee's order entered in this cause on February 26, 1953.

The referee correctly considered himself bound by Beecher v. Leavenworth State Bank, 192 F. 2d 10 (9th Cir. 1951) even though the law may be otherwise in the Sixth Circuit. See In re Macomb Trailer Coach Inc., 200 F. 2d 611 (6th Cir. 1953). While the opinion in the Beecher case does not clearly indicate whether the proceeds from the sale of the security were sufficient to pay interest on the secured creditor's claim, the reasoning of the Court of Appeals is fully applicable to the case at bar. This Court, furthermore, sees no reason to disturb the referee's finding

that Prudential has proved no equities which would take this case out of the Beecher rule.

The referee's order is affirmed and his report approved.

Dated: June 10, 1953.

Edward P. Murphy,
United States District Judge.